## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

PROGRESSIVE FOODS, LLC,	Case No. 1:07 CV 3424
Plaintiff,	JUDGE DAVID D. DOWD, JR.
DUNKIN' DONUTS INCORPORATED, BASKIN-ROBBINS USA, CO., and THIRD DUNKIN' DONUTS REALTY, INC.,  Defendants and Plaintiffs- in-Counterclaim and Third Party Complaint,	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
V.  EITAN FLANK, MIKE FLANK, SHAUL FLANK, JOEL SAUSEN, and KEVIN DAUBENMIRE,  Third Party Defendants.	ORAL ARGUMENT REQUESTED

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants and Counterclaim Plaintiff's Dunkin' Donuts, Inc. *et al.* (collectively "Dunkin'") move the Court for an Order granting summary judgment in their favor on all counts set forth in Plaintiff's First Amended Complaint as well as on Dunkin's Counterclaim against Plaintiff and Third Party Defendants (collectively, "Progressive"). There are no genuine issues as to any material fact, and Dunkin' is entitled to summary judgment as a matter of law. More specifically, as discussed in the accompanying Memorandum of Law, Plaintiff's claims against Dunkin' must be dismissed because Plaintiff specifically disclaimed them when it signed contracts with Dunkin'. In addition, most of its claims are barred by contractual standards of limitations periods, and/or otherwise fail as a matter of law. Summary judgment is also appropriate granting Dunkin's

counterclaim for breach of contract, as there are no factual issues in dispute regarding Progressive's breach of contract, and its breach was not justifiable under any legal theory.

This motion is based upon the accompanying Statement of Facts/Memorandum of Law, the Certifications of Jack Laudermilk and Gary Zullig and accompanying exhibits, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing. Defendants respectfully request Oral Argument.

Respectfully submitted,

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Dated: June 5, 2009 Attorneys for Defendants and Plaintiffs-in-

Counterclaim

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Jeffre	y L. Karlin